



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

KENNETH NOEL MARINOS,
Petitioner,
v.
M. MARTEL, WARDEN,
Respondent.

Case No. CV 08-06719 ODW (AN)

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the file, including the Magistrate Judge's Report and Recommendation ("R&R") and Petitioner's Objections thereto, *de novo*. IT IS ORDERED that:

1. Petitioner's Objection do not establish the findings and conclusions in the R&R are erroneous. Further, as discussed in the R&R at 6:20-7:1, Petitioner's claim is foreclosed by the Ninth Circuit's recent decision in *Butler v. Curry*, 528 F.3d 624 (9th Cir. 2008). Accordingly, Petitioner's Objections are overruled and the R&R is approved and adopted.

2. Judgment shall be entered denying the Petition and dismissing this action with prejudice.

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1 3. All other motions are denied as moot and terminated.

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3 IT IS FURTHER ORDERED that the Clerk of the Court shall serve a copy of this
4 Order and the Judgment on all counsel or parties of record.

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6 Dated: December 15, 2008

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9 OTIS D. WRIGHT, II
10 UNITED STATES DISTRICT JUDGE
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